

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

HECTOR FARIAS-ALVAREZ,
Defendant.

NO. CR-12-6026-WFN-1

ORDER ON MOTION FOR
RECONSIDERATION

A hearing on Defendant's Motion for Reconsideration (ECF No. 49) was held September 24, 2012. The Defendant, who is in custody, was present and represented by Diane Hehir; Assistant United States Attorney Benjamin Seal represented the Government; United States Probation Officer Kevin Crawford was also present. The Court has reviewed the file and Motion, heard argument of counsel, and is fully informed. This Order is entered to memorialize and supplement the oral rulings of the Court.

Defendant asks the Court to reconsider the sentence imposed as well as to clarify whether the Court determined that the 16 point enhancement applied was based on the categorical or modified categorical approach. The Court concludes that under the categorical approach the 16 point enhancement was proper. *United States v. Jennen*, 596 F.3d 594 (9th Cir. 2009). Under a modified categorical approach, the Court would reach the same result because the charging document for second degree assault, to which he pled to, stated that Defendant "did intentionally assault [R.L.], a human being, with a deadly weapon, to wit, a pistol." During the hearing, the Court reiterated that the

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1 sentence imposed took into account the guideline range and calculation, but that it also
2 was sufficient but not greater than necessary under the 18 U.S.C. § 3553(a) factors,
3 taking into consideration counsel's arguments regarding cultural assimilation.

4 The Court also notes that granting a fast track departure request, after a Defendant has
5 opted-out of the fast track program, is inappropriate. Granting such a request would
6 undermine the fast track program. Accordingly,

7 **IT IS ORDERED** that:

8 1. Defendant's Motion for Reconsideration, filed September 17, 2012, **ECF No. 49**,
9 is **GRANTED**. The underlying objections and motion for downward departure were
10 reconsidered.

11 2. After carefully considering the submission from the parties, the Court's previous
12 ruling and sentence shall **REMAIN UNCHANGED**.

13 The District Court Executive is directed to file this Order and provide copies to
14 counsel **AND TO** United States Probation Officer Kevin Crawford.

15 **DATED** this 25th day of September, 2012.

16
17
18 09-24-12

s/ Wm. Fremming Nielsen

WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE